

REMARKS

Claims 1, 2, and 13-20 are currently pending in the present application. No new matter has been added by way of the present submission. For instance, claims 1 and 2 have been amended to define the maximum rolling interval time as being less than or equal to 0.85 seconds as supported by the present specification, including Figure 3. Thus, no new matter has been added.

Further, no new issues have been raised by way of the present submission which would require additional search and/or consideration on the part of the Examiner. In the event that the present submission does not place the application into condition for allowance, entry thereof is respectfully requested as placing the application into better form for appeal.

In view of the following remarks, the Examiner is respectfully requested to withdraw all rejections and allow the currently pending claims.

Issue Under 35 U.S.C. § 103(a), Obviousness

Claims 1, 2, and 13-20 stand rejected under 35 U.S.C. § 103(a) as unpatentable to the English machine translation of JP '914, in view of the English machine translation of JP '075.

The Examiner argues that since the compositional ranges of claims 1 and 2 either overlap with or fall within the ranges disclosed by JP '075, as well as JP '914, a *prima facie* case of obviousness exists. The Examiner also asserts that it would have been obvious to combine the two references to use the steel composition of JP '075 within the method of JP '094 since JP '075 discloses a steel rail with high carbon content that also contains nitrogen. Concerning the expressions within claims 1 and 2, the Examiner maintains that the expressions have been satisfied.

Applicants respectfully disagree and submit that neither “expression 1” of claim 1 nor “expression 2” of claim 2 is satisfied by the cited art. It is only possible to satisfy these expressions if specific conditions, e.g., the carbon content of the steel in mass%, the maximum surface temperature (°C) of a rail head and the number of passes (claim 2 only) are arbitrarily selected. However, in an effort to further distinguish the present invention from the cited art, Applicants have specifically defined one of the parameters of expressions 1 and 2, which is “(S)”, wherein S is the maximum rolling interval time (seconds) and is less than or equal to 0.85 seconds.

It is immediately evident that this particular S value of 0.85 seconds or less is not suggested by the cited art. Moreover, such a value is not inherent since the Examiner’s selection of various parameters led to a calculated S value of 1.05, which is greater than the S value parameter now claimed. In view of such deficiency, Applicants submit that there can exist no *prima facie* case of obviousness.

Further, this particular S value of 0.85 seconds or less is clearly shown in Figure 3 of the present application to imparts greatly improved ductility. Such results are clearly superior and unexpected over the cited art. Therefore, any hypothetical *prima facie* case of obviousness, which Applicants do not admit has been established, is moot.

CONCLUSION


In view of the above, Applicants respectfully request that the Examiner withdraw the outstanding rejection and allow the currently pending claims.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Craig A. McRobbie, Reg. No. 42,874, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By  42-874

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